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INQUIRY CONCERNING)	NOTICE OF FORMAL PROCEEDINGS
FORMER JUDGE ALFONSO D. HERMO,)	and
NO. 160)	DECISION AND ORDER IMPOSING
)	PUBLIC CENSURE AND BARRING
)	JUDGE HERMO FROM RECEIVING
)	ASSIGNMENTS
)	

At some time during the afternoon on January 21, 1998, Mr. Felix appeared before you in connection with the above-referenced cases. Mr. Felix was without counsel and he conversed with you through a Spanish language interpreter. At that time, you issued an order recalling the

arrest warrants, arraigned Mr. Felix, and scheduled a pretrial conference for February 9, 1998. You then told Mr. Felix, "I'm going to set bail in this case, so have a seat over there," pointing toward the jury box. You then ordered bail set at \$25,000 and appointed the public defender's office to represent Mr. Felix.

Pursuant to your order, Los Angeles County Sheriff's Deputy, Al Garces, who had been your bailiff for 24 years, directed Mr. Felix to sit in a chair in front of the jury box and next to a door in the courtroom leading to an adjacent holding area. Shortly thereafter, you adjourned the proceedings for the afternoon recess. After the recess was called and after you had left the bench, Mr. Felix ran out of the courtroom. Deputy Garces briefly pursued Mr. Felix and ordered him to stop, but Mr. Felix ran out of the building and avoided capture. Deputy Garces returned to the courtroom and proceeded to your chambers, where he informed you that Mr. Felix had escaped. You responded by ordering that a warrant issue for Mr. Felix's arrest in each of the five pending cases and that bail be set at amounts totaling \$175,000. You then wrote a note in one of the *Felix* case files, on a document labeled "Record of Proceedings in Court," stating, "def[endant] ran out of [the] courtroom."

Deputy Garces did not report Mr. Felix's escape to the sheriff's department. Instead, at approximately 9:30 a.m. the following morning, January 22, 1998, Deputy Garces falsely told his supervisor at the Whittier courthouse that you had ordered Mr. Felix released on his own recognizance. Later that morning, Deputy Garces approached you while you were on the bench and handed you the *Felix* files. Deputy Garces engaged you in a private conversation, during which the deputy advised you that he would be suspended from the sheriff's department for three weeks without pay for allowing Mr. Felix to escape.

You responded to Deputy Garces' statements during the bench conversation by ordering the recall of the warrants issued for Mr. Felix's arrest, and further ordering that Mr. Felix be released on his own recognizance. You also ordered reinstatement of the February 9, 1998, pretrial conference date. You marked a line through the handwritten notation "B35,000" (shorthand for \$35,000 bail) and wrote "OR" (shorthand for own recognizance) on a "Record of Proceedings in Court" form pertaining to the pending *Felix* cases. On the same form, you also wrote "warrant recalled OR," and marked this entry with your initials, "AH." These entries, while made on January 22, 1998, appear near file date stamps reading, "Jan 21 1998." You directed your courtroom clerk to immediately notify both the district attorney's and public defender's offices that Mr. Felix's status had been changed from bail to own recognizance. Neither Mr. Felix nor his counsel was present in the courtroom during the above-described events on January 22, 1998.

You took these actions to help Deputy Garces avoid being suspended without pay for allowing Mr. Felix to escape. You understood at the time that Deputy Garces was supporting a family and had numerous debts.

On March 17, 1999, a Los Angeles County grand jury indicted you and Deputy Garces in connection with the foregoing events. The indictment charged you and Deputy Garces with one felony count of "conspiracy to obstruct justice or the due administration of the law," in violation of California Penal Code section 182(a)(5). The indictment alleged that on or about January 22,

1998, you and Deputy Garces “did willfully and unlawfully conspire together to obstruct justice, and pervert the due administration of the laws” The indictment further alleged that you participated in the conspiracy by means of the following overt acts: you “issued an order recalling the five arrest warrants for escapee Frederico Felix”; “wrongly issued an ‘own recognizance’ (OR) release for the escaped prisoner Frederico Felix on each of [his] five pending criminal cases”; “wrote ‘OR’ in each of the five active files for Frederico Felix and signed each entry with [your] initials, ‘AH,’ without legal cause”; and “failed to perform [your] duty to re-issue arrest warrants for escaped prisoner Frederico Felix.”

On November 30, 1999, pursuant to plea agreements with the Los Angeles County District Attorney’s Office, you and Deputy Garces each pleaded no contest to aiding and abetting a person’s escape after remand to the custody of a sheriff, a violation of Penal Code, section 836.6(a), a misdemeanor. On January 19, 2000, the court suspended imposition of sentence and placed both you and Deputy Garces on two years’ informal court probation. Among the terms of probation imposed on you and Deputy Garces were that each of you perform 40 hours of volunteer work and pay a \$1,000 fine.

Your conduct on January 22, 1998, violated the California Code of Judicial Ethics, canons 1, 2, and 2A.

YOU ARE HEREBY GIVEN NOTICE, pursuant to Rules of the Commission on Judicial Performance, rule 118, that formal proceedings have been instituted and shall proceed in accordance with Rules of the Commission on Judicial Performance, rules 101-138.

II. DECISION

Judge Alfonso D. Hermo, his attorney, Edward P. George, Jr., and the commission’s trial counsel, Jack Coyle, have submitted to the commission a proposed disposition by consent, supported by Judge Hermo’s affidavit of consent¹. Judge Hermo waives filing an answer to the notice of formal proceedings and hearings before the commission and special masters. Judge Hermo stipulates to the truth of all the factual allegations in the notice of formal proceedings. Judge Hermo further stipulates that his actions of January 22, 1998, regarding the *Felix* cases as set forth in the notice of formal proceedings, constitute willful misconduct in office under article VI, section 18(d) of the California Constitution, and that his conduct warrants a public censure and a bar from receiving assignments.

The commission accepts the stipulation and finds that the factual allegations in the notice of formal proceedings are true. The commission further finds that Judge Hermo’s actions of January 22, 1998, regarding the *Felix* cases as set forth in the notice of formal proceedings, constitute willful misconduct in office under article VI, section 18(d) of the California Constitution. Judge Hermo’s conduct was in violation of the California Code of Judicial Ethics, canon 1 (“a judge shall uphold the integrity and independence of the judiciary”), canon 2 (“a judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities”), and canon 2A (“a judge shall respect and comply with the law and shall act at all times in a

¹ The proposed disposition and affidavit are on file and available for public inspection.

manner that promotes public confidence in the integrity and impartiality of the judiciary”). Judge Hermo’s actions were committed in bad faith: his orders recalling the bench warrants and orders for manufactured, after-the-fact own recognizance releases were without legal authority, creating a misleading record, and were done for the improper purpose of doing a personal favor for his long-time bailiff rather than for the faithful discharge of his judicial duties.

As Judge Hermo has retired from judicial office, he is not subject to removal. However, article VI, section 18(d) of the California Constitution provides that the commission may “censure a ... former judge ... for action ... that constitutes willful misconduct in office ... or conduct prejudicial to the administration of justice that brings the judicial office into disrepute” Section 18(d) also provides that the commission may “bar a former judge who has been censured from receiving an assignment, appointment, or reference of work from any California state court.”

The commission accepts Judge Hermo’s stipulation and finds that his conduct warrants a public censure and bar from receiving any assignment, appointment or reference of work from any California state court. In California, and elsewhere, judges have been removed from office for misconduct that included intentionally altering a court record or creating an inaccurate record. See *Fletcher v. Commission on Judicial Performance* (1998) 19 Cal.4th 865, 886-891 (judge directed a court clerk to alter a minute order that the judge subsequently submitted to the Commission on Judicial Performance in its altered form), *Wenger v. Commission on Judicial Performance* (1981) 29 Cal.3d 615, 643-645 (judge directed a clerk to backdate a document entitled “Affidavit in Support of Hearing on Contempt”), and *In re Sterlinske* (Wisc. 1985) 365 N.W.2d 876, 877-878 (judge dictated and signed, more than three months after the conclusion of a criminal trial, a certificate falsely attesting that a conference on proposed jury instructions and on a proposed verdict had been held in his chambers).

The commission orders that former Judge Alfonso D. Hermo be publicly censured, and that he be barred from receiving any assignment or reference from any California state court.

Commission members Mr. Michael A. Kahn, Ms. Lara Bergthold, Judge Madeline I. Flier, Ms. Gayle Gutierrez, Mr. Patrick M. Kelly, Mrs. Crystal Lui, Judge Rise Jones Pichon, Justice Vance W. Raye, and Ms. Ramona Ripston voted to issue the notice of formal proceedings, and to impose this public censure and bar from receiving assignments. Commission member Mr. Mike Farrell did not participate in this matter. There is currently one public member vacancy.

This decision and order shall constitute the order of public censure and bar.

Dated: February ___, 2001

Michael A. Kahn, Esq.
Chairperson